

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LEE EDWARD PEYTON,

Defendant and Appellant.

2d Crim. No. B210763
(Super. Ct. No. 2003015069)
(Ventura County)

Lee Edward Peyton appeals a judgment of conviction entered after he pleaded guilty to robbery, and admitted suffering a prior strike conviction and serving a prior prison term. (Pen. Code, §§ 211, 667, subd. (b)-(i), 667.5, subd. (b).)¹ We appointed counsel to represent him in this appeal. After counsel's examination of the record, he filed an opening brief raising no issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441.) On January 16, 2009, we advised Peyton that he had 30 days within which to personally submit any contentions or issues that he wished to raise on appeal. We have received a response from him contending that 1) his guilty plea is invalid because he was under the influence of psychiatric medication and mentally incompetent to proceed; and 2) the trial court imposed punishment in violation of the plea agreement. Peyton adds that he did not receive the effective assistance of counsel because counsel induced his guilty plea allegedly knowing that he was not competent. Pursuant to *People v. Kelly*

¹ All further statutory references are to the Penal Code.

(2006) 40 Cal.4th 106, 123-124, we present a factual and procedural summary of the case, and a brief discussion of Peyton's contentions.

FACTS AND PROCEDURAL HISTORY

According to the factual summary in the probation report, Peyton and two others came upon a vehicle occupied by two young men. Peyton and the others accosted the young men, shouted gang slurs, and took compact discs from their vehicle.

On June 10, 2003, the prosecutor charged Peyton by information with one count of second degree robbery. (§ 211.) The prosecutor also alleged that Peyton suffered a prior serious felony strike conviction and served a prior prison term within the meaning of section 667.5, subdivision (b). (§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) On October 31, 2003, Peyton waived his constitutional rights, pleaded guilty to robbery, and admitted suffering the prior strike conviction and serving a prior prison term therefor. The trial court sentenced him to a low-term sentence of two years, which it then doubled as a second strike conviction, and added one year for the prior prison term enhancement, for a total prison term of five years. The court awarded Peyton 227 days of presentence custody and conduct credits, and imposed various fines and fees.

In January 2004, Peyton attempted to file a notice of appeal and a request for a certificate of probable cause based upon his claim of ineffective assistance of counsel. The trial court rejected the documents for filing because they were untimely. Peyton then sought relief by a petition for habeas corpus in federal district court. On June 30, 2008, the federal district court granted relief and in September 2008, the trial court filed Peyton's notice of appeal and issued a certificate of probable cause.

DISCUSSION

On October 31, 2003, Peyton signed and initialed a written guilty plea to robbery, with admissions of a prior felony strike conviction and a prior prison term. The written form states that Peyton could receive a maximum sentence of 11 years and explains his constitutional rights and the consequences of his guilty plea and admissions. In the change-of-plea proceeding, Peyton received an explanation of his constitutional rights, expressly waived them, and then pleaded guilty and admitted the strike allegation

and serving the prior prison term. He also stated that he entered his guilty plea freely and voluntarily. At one point in the proceedings, Peyton disputed the nature of the prior felony strike conviction and described it as a robbery. The transcript of the change-of-plea proceeding does not disclose or suggest that Peyton's guilty plea was involuntary, that he was mentally incompetent, or under the influence of medication affecting the voluntariness of his plea. Our review is limited to matters within the appellate record. (*Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 306.) A claim of ineffective assistance of counsel is not appropriate on appeal where the record does not illuminate the basis for counsel's challenged acts or omissions. (*People v. Pope* (1979) 23 Cal.3d 412, 426, overruled on another ground in *People v. Berryman* (1993) 6 Cal.4th 1048, 1081, fn. 10.)

The written plea form states that Peyton could receive a maximum sentence of 11 years. The form does not state an agreed-upon sentence. Peyton's five-year sentence is legally authorized as a second strike conviction.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Ken W. Riley, Judge
Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.